

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795		Hearing Date/Agenda Number P.C. 10-23-02 Item.	
STAFF REPORT		File Number CP 02-044	
		Application Type Conditional Use Permit	
		Council District 6	
		Planning Area South	
		Assessor's Parcel Number(s) 455-45-007	
PROJECT DESCRIPTION		Completed by: John W. Baty	
Location: West side of Dow Drive approximately 1250 feet north of Hillsdale Avenue (3077 Dow Drive)			
Gross Acreage: 7.87		Net Acreage: 7.87	
		Net Density: 0.13 DU/AC	
Existing Zoning: A-Agriculture		Existing Use: Single-family residence	
Proposed Zoning: No change		Proposed Use: Addition to single-family residence	
GENERAL PLAN		Completed by: JWB	
Land Use/Transportation Diagram Designation Medium Density Residential (8-16 DU/AC) and Private Open Space		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING		Completed by: JWB	
North: Single-family Detached Residential		A-Agriculture	
East: Single-family Detached Residential		A(PD) Planned Development	
South: Single-family Detached Residential		A-Agriculture	
West: Single-family Detached Residential beyond Canoas Creek		A(PD) Planned Development	
ENVIRONMENTAL STATUS		Completed by: JWB	
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete	
FILE HISTORY		Completed by: JWB	
Annexation Title: Canoas No_28		Date: November 17, 1997	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision		Date: _____ <input type="checkbox"/> _____ Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation	
OWNER/DEVELOPER	ARCHITECT		
Diane Patricia Rubino 3077 Dow Drive San Jose, CA 95125	Robert Aviles, Jr. 4833 Soquel Drive Soquel, CA 95073		

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JWB

Department of Public Works

See attached Final Memo

Other Departments and Agencies

N/A

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Diane Rubino, is requesting a Conditional Use Permit to allow a 712 square foot addition to her single-family house. The subject property is zoned A-Agriculture. Pursuant to the Zoning Ordinance, single-family residential uses in the A-Agriculture Zoning District, or expansions thereof, require the issuance of a Conditional Use Permit. The existing hillside site is approximately 7.8 acres and is currently developed with an approximately 3,990 square foot one-story house and an approximately 2,172 square foot detached garage/shop. The existing house was built in 1974. The site takes access off of Dow Drive by way of a 24-foot wide private driveway that also serves rural property to the south. This same driveway provides access to another the adjacent parcel to the north.

Surrounding uses include single-family detached houses to the north, east and south and single-family detached houses to the west beyond Canoas Creek.

Project Description

The proposed project consists of a 712 square foot one story addition along the southwesterly end of the existing residence. The addition would accommodate a new master bedroom and bathroom. Only minimal grading is necessary to accommodate this small addition.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15301(e)(1) which pertains to additions to existing structures provided that the addition will not result in an increase in more than 50 percent of the floor area of the structure before the addition.

GENERAL PLAN CONFORMANCE

The project site has General Plan Land Use/Transportation Diagram designations of Private Open Space over the easterly half of the site and Medium Density Residential (8-16 DU/AC) over the westerly half of the site. The proposed addition to the existing single-family detached residence is located within the area designated Medium Density Residential (8-16 DU/AC) and is consistent with the subject site's General Plan designation.

ANALYSIS

The primary issues analyzed for the project include conformance to the Zoning Ordinance.

Conformance to the Zoning Ordinance Requirements

Single-family detached residential units are allowed in the A-Agriculture Zoning District with the issuance of a Conditional Use Permit. However, the Zoning Code previously required a minimum 300-foot setback from abutting property zoned or used for residential purposes. The proposed addition is located approximately 190 feet from the northerly property line that is shared with an existing single-family residential use. The setbacks for the proposed addition to the remaining property lines meet or exceed the minimum required setback or those already established with the existing structure.

City Council recently adopted an ordinance amending the Zoning Code to allow the Director the ability to grant a reduction in the minimum required setback from an abutting property zoned or used for residential purposes for additions to existing structures or new structures on a lot located in either the A-Agriculture or OS-Open Space Zoning District.

This setback exception requires that 1) the subject site is located adjacent to a residentially zoned or used property and has substantial existing development; 2) the sizes of any and all additions shall not exceed fifty percent of the square footage of the existing structures; 3) the aggregate total square footage of all additions shall not exceed fifty percent of the square footage of the existing structures on the subject site or lot as of February 19, 2001; 4) any addition or structure to be added shall not significantly diminish the existing, legal nonconforming setback, and, in any event, no addition or structure to be added shall reduce a setback to less than fifty feet; and 5) any new addition or structure shall not exceed the height of existing structures located on the subject site or lot, or the maximum height allowed by the Zoning Code.

The proposed addition meets all of the setback exception requirements. 1) The site is located adjacent to residentially used properties and has substantial existing development, 2) the proposed 712 square foot addition represents 11.5 percent of the total 6,162 square feet of existing structures, 3) as of February 19, 2001 no other additions have been made therefore the aggregate addition is 11.5 percent of the existing structures, 4) the proposed addition does not reduce the existing legal nonconforming setback, and 5) the proposed addition does not exceed the height of the existing structure or the maximum height allowed by the Zoning Code.

PUBLIC OUTREACH

A notice of the public hearing for the subject permit was distributed to the owners and tenants of all properties located within 500 feet of the subject site.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Private Open Space and Medium Density Residential (8-16 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the A-Agriculture Zoning District.
3. The project site is 7.87 acres in area.
4. The project site is currently developed with an existing 3,990 square foot one-story single-family residence built in the 1970's and a 2,172 square foot detached garage/shop.
5. The project proposes a 712 square foot single-story addition to be located approximately 190 feet, 300 feet, and 500 feet from the adjacent properties used for single-family residences to the north, south and east respectively.
6. The proposed addition is located approximately 160 feet from the west property line abutting Canoas Creek.
7. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
 3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Rubino Residence: Addition & Remodel", dated July 1, 2002, last revised on August 30, 2002, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Plan Revision.** Within 60 days of the issuance of this permit and prior to the recordation, the applicant shall revise the project plans to include the items(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
 - a. The applicant shall correct the zoning on the cover sheet from "R-1" to read "A-Agriculture".
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public streets each working day. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
6. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Upon notice by the City any such nuisance must be abated immediately.
7. **Colors and Materials.** All colors and materials shall be as specified on the approved plan set.
8. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-16203) to the satisfaction of the Director of Public Works:
 - a. *Geology.* A Geologic Hazard Clearance is required prior to Building Permit approval.
 - b. *Sewage Fees.* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.

9. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP02-044 shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
10. **Fire Flow.** Required fire flow for the site is 2,000 G.P.M., or as approved in writing by the Fire Chief.
11. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
12. **Locked Gates.** Each locked gate on site shall have an approved device with unlocking capability with a manual means of opening if there is a power failure to the satisfaction of the Fire Chief.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.